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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/777,088	02/13/2004	Donald R. Cohee	TPP 31479A	4113
7590 09/14/2004			EXAMINER	
Stevens, Davis, Miller & Mosher, L.L.P.			FORTUNA, ANA M	
Suite 850			ART UNIT	
1615 L Street, N.W.			PAPER NUMBER	
Washington, DC 20036			1723	

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

AS

Office Action Summary	Application No. 10/777,088	Applicant(s) COHEE ET AL.	
	Examiner Ana M Fortuna	Art Unit 1723	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 February 2004.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-22 is/are pending in the application.
- 4a) Of the above claim(s) 11-22 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-10 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date <u>5/10/04</u> . | 6) <input type="checkbox"/> Other: _____ |

Election/Restrictions

1. Restriction to one of the following inventions is required under 35 U.S.C. 121:
 - I. Claims 1-10, drawn to a vessel including a septum, classified in class 210, subclass 321.6.
 - II. Claims 11-22, drawn to a process of passing a fluid through a septum, classified in class 210, subclass 767

The inventions are distinct, each from the other because of the following reasons:

2. Inventions I and II are related as process and apparatus for its practice. The inventions are distinct if it can be shown that either: (1) the process as claimed can be practiced by another materially different apparatus or by hand, or (2) the apparatus as claimed can be used to practice another and materially different process. (MPEP § 806.05(e)). In this case the apparatus (vessel) of group I can be used without collapsing a wall of the vessel, cooling or heating, or without adding additional fluid to the vessel

3. Because these inventions are distinct for the reasons given above and the search required for Group II is not required for Group I, restriction for examination purposes as indicated is proper.

4. Because these inventions are distinct for the reasons given above and have acquired a separate status in the art as shown by their different classification, restriction for examination purposes as indicated is proper.

5. During a telephone conversation with Thomas P. Pavelko on 9/01/04 a provisional election was made with traverse to prosecute the invention of group I, claims 1-10. Affirmation of this election must be made by applicant in replying to this Office action. Claims 11-22 are withdrawn from further consideration by the examiner, 37 CFR 1.142(b), as being drawn to a non-elected invention.

6. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

DETAILED ACTION

Claim Rejections - 35 USC § 112

7. Claims 4, 6 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 4 is indefinite as to what is intended. The septum is improperly claimed as "vacuum device and moveable tubes. The claim is unclear as to whether the septum further comprising elements selected from the group consisting of micropores, a vacuum device, and moveable tubes.

In claim 6, the term "formed from at least one selected fro the group consisting of fabric..." is unclear as to whether selected from the group consisting of..." is intended.

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8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(a) the invention was known or used by others in this country, or patented or described in a printed publication in this or a foreign country, before the invention thereof by the applicant for a patent.

9. Claims 1, 2, 3, 4, 6, 7, 8, 10 are rejected under 35 U.S.C. 102(b) as being anticipated by Rothaman et al (6,497,823)(hereinafter '823). Reference '823 discloses the vessel or container comprising flexible walls, e.g. blood bag (SLX® BAGS) (element 10, Fig. 1, column 4, lines 36-46, column 11, lines 52-57), and a septum spaced intermediate said first and second ends, and attached to the bag (Element 2, Fig. 1). At least on inlet for introducing biological fluid is also provided in the filter (Fig. 1), as claimed in claim 2. As to claim 4, the septum is disclosed by '823 as a filter material or membrane with microporous (column 3, third paragraph). As to claims 6-7, the septum or membrane are made from a plastic or rigid polymeric material (column 5, lines 45-56). As to claim 8, the filter covering the entire cross sectional area of the container or more than 80 % of the cross sectional area of the container is shown in the figures (Figures 1-4). Regarding claim 10, positioning the filter in a location allowing rocking, or rotation is disclosed on '823, column 10, second paragraph. As to claim 3, the filter floating or moving inside the housing is also disclosed (Fig. 4).

Claim Rejections - 35 USC § 103

10. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

11. Claims 1, 5 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Shiino et al (4,981,596)(hereinafter '596. Reference '596 discloses the filter vessel containing a septum (3), the septum is disclosed as a composite filter including layer exposing the filter core (12 (figures 1-2)). A further filter connected to the flexible container for filtering the fluid (blood) passing through the septum is also disclosed (transfusion filter F (Fig. 1)). The second filter F is not disclosed as being provided inside the vessel, however is connected to the discharge conduit from the vessel, it would have been obvious to one skilled in the art at the time the invention was made to adapt the vessel or bag containing the filter or septum with a second filter within the vessel, e.g. connected to the outlet opening from the filter, since it would perform in the way suggested by '596, e.g. post-filtering the filtered product. Without critically affecting the intended process.

Conclusion

12. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Additional reference 6,251,291, 5,772,644 , 6,189,704 represent state of the art in filters within a housing, flexible container and filter medium structure, additional references are also of interest in the art.

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13. IDS filed on 5/10/04 has been considered, a copy of signed 1449 is attached.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ana M Fortuna whose telephone number is (571) 272-1141. The examiner can normally be reached on 9:30-6:00 M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Wanda L. Walker can be reached on (571) 272-1151. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Ana M Fortuna
Primary Examiner
Art Unit 1723

AF
September 07, 2004